June 2002. Moran conceded that these two payments could not be construed as payments received from paid work, but argued that if they were to be excluded from a calculation of his earnings, so the periods to which they referred should be excluded from any calculation of the period of time over which he earned income. His earnings from Myer Stores exceeded the threshold set by s.1067A of the Act, but had been earned (when the periods of unemployment through illness were included) over longer than 18 months. In addition, Moran contended that had he not been ill and had his average monthly earnings continued, he would have earned more than the threshold income in under 18 months.

Centrelink argued that the 18-month period referred to in s.1067A was a single time frame and could not be an aggregation of separate time periods.

The decision

The Tribunal noted that s.1067A(10) of the Act requires that the person have '*supported himself or herself through paid work*' and concluded that this was limited to one of the three forms of employment specified within ss.(a), (b) and (c) of that section. Although other payments — such as income protection payments — could have some nexus to paid employment, these could not be taken into account in determining whether a person had supported him or herself within the terms of s.1067.

Moran had earned a total of $16,827 which exceeded the relevant Commonwealth training award, but had done so in two separate periods of employment spanning some 25 months broken by a 10-month period of unemployment. The Tribunal noted that the term '18 month period' in s.1067A(10) is expressed in the singular, whereas elsewhere in the paragraph the word 'period' is used in both singular and plural form, and concluded that in s.1067A(10) it referred to a single, unbroken period of 18 months.

As Moran had earned more than 75% of the relevant Commonwealth Training Award but not in a single unbroken period of 18 months, he did not fall within the definition of 'independent' as provided in s.1067A(10) of the Act.

Formal decision

The Tribunal affirmed the decision under review.

[P.A.S]

Farm Restart Re-establishment Grant: whether a farm owner, valuation of shares in private company

HUNT and SECRETARY TO THE DFaCS
(No. 2003/741)

Decided: 1 August 2003 by W.J.F. Purcell

Background

Hunt owned 66 shares in Nalang Properties Pty Ltd ('the Company'), a family company which owned land separately farmed now by Hunt's brothers, and a neighbour who had been granted a sub-lease by Hunt. Hunt was a partner with his wife, in the Murrabinna Partnership ('the Partnership'), which formerly farmed a portion of the Company's land pursuant to a lease. However, Hunt executed an under-lease of the partnership lease to his neighbour, for the period 1 March 1999 to 28 February 2004.

Hunt lodged a claim for a Restart Re-establishment Grant. On 3 August 2000 the claim was rejected on the basis that Hunt still had an interest in farming, due to his shares in the Company, which were considered to be a farm asset. On 4 June 2001 the SSAT set aside the decision, and substituted a decision that the shares were a personal asset, rather than a farm asset, and remitted the matter to Centrelink for further consideration. On 24 July 2001 a delegate reconsidered the matter and decided that the under-lease constituted an interest in farming, and that the value of the shares was likely to exceed the then asset limit of $157,500. On 2 August 2002 the delegate considered that as the under-lease expired within a five-year period, Hunt could not undertake not to return to farming within five years. On 22 August 2001, a complex assessment officer assessed the value of Hunt's shares in the Company at $370,410.

On 3 September 2001, an Authorised Review Officer affirmed the decision, and stated that he considered that the shares were clearly not primary production assets, and that the asset value of the shares could not be reduced by the value of primary production liabilities (ie liabilities of the farming partnership Murrabinna Pastoral Company). In his opinion the only way the value of the shares could be reduced would be if Hunt had borrowed money using his shares as security. The Authorised Review Officer could see no evidence of that, and he found that Hunt's assets were worth $370,410, using the net asset backing method. As the assets were in excess of the assets limit of $157,500, the Authorised Review Officer noted, in addition to affirming the decision, that the lease reverted to Hunt at the end of the sub-lease, in February 2004, and there was some doubt as to whether he would then be classed as a farm owner or operator, at that time.

Legislation

The Farm Help Re-establishment Grant Scheme 1997, formulated under s.52A of the *Social Security Act 1991* ('the Act'), defines a 'farm owner or operator' as 'a person who has a right or interest in the land used for the purposes of a farm enterprise'. Qualification for the Re-establishment Grant ('the Grant') is set out in Division 2, which provides:

> **Division 2 Qualifying for the re-establishment grant**
>
> 3.2 Who is qualified for a re-establishment grant?
>
> (1) A person is qualified to receive a re-establishment grant if:
>
> (a) the person was eligible to apply for the re-establishment grant when the person applied; and
>
> (b) the person's farm enterprise has been sold (and completion of the sale has taken place) within 1 year, or such longer period as the Minister, in writing, allows under section 3.2A, after:
>
> (i) if the person has received farm help income support — the person last received farm help income support; or
>
> (ii) in any other case — the person applied for the re-establishment grant; and
>
> (baa) the sale is completed before 1 December 2004; and
>
> (ba) immediately before the sale the person was effectively in control of the farm enterprise; and
>
> (c) the sale was on commercial terms and at arm's length; and
>
> (d) the person and, if the person had a partner when the person applied for the re-establishment grant, the partner (whether or not they remain partners):
>
> (i) are not farm owners or operators; and
>
> (ii) do not own any farm plant or machinery, farm livestock or other assets essential for the effective running of a farm enterprise; and
>
> (e) the person has complied with any direction under Division 2 of Part 2 of this Scheme or section 13A of the Act to obtain advice; and

(ea) the person has complied with any activity plan direction given to the person under section 13B of the Act or Division 3 of Part 2 of this Scheme; and

(f) the value of the person's assets is less than $167,500; and

(g) the person has not previously received:

(i) a re-establishment grant under this scheme; or

(ii) a re-establishment grant under an agreement subject to the Rural Adjustment Act 1992; or

(iii) a grant under the program known as the Pork Producer Exit Program; or

...

A person's assets are to be calculated in accordance with Parts 3.12 and 3.18 of the Act. Section 1121 of the Act provides:

(1) If there is a charge or encumbrance over a particular asset of the person, the value of the asset, for the purposes of calculating the value of the person's assets for the purposes of this Act, is to be reduced by the value of that charge or encumbrance.

Note: this section does not apply to an asset to which section 1121A (primary production assets) applies.

(2) Subsection (1) does not apply to a charge or encumbrance over an asset of a person to the extent that:

(a) the charge or encumbrance is a collateral security; or

(b) the charge or encumbrance was given for the benefit of a person other than the person or the person's partner.

...

Section 1121A of the Act further provides:

(1) For the purposes of working out the value of a person's assets under this Act, if:

(a) the person is:

(i) a primary producer; or

(ii) a family member of a primary producer; and

(b) the person has assets (including real property) that are, in the Secretary's opinion, used for the purposes of carrying on that primary production; and

(c) the person also has liabilities that are, in the Secretary's opinion, related to the carrying on of the primary production;

then:

(d) section 1121 does not apply in relation to the assets referred to in paragraph (b); and

(e) those assets are taken to be a single asset (in this section called the 'primary production asset'); and

(f) the value of that single asset is worked out under subsection (2).

Note: for family member see subsection 23 (1).

...

Submissions

Hunt maintained that he had not been a farmer for more than three years since he signed the under-lease and he undertook not to return to the farm in the five years following the signing of the lease. In relation to the value of the shares he owned in the Company, he maintained that on an appropriate valuation method, as used by those who deal in minority shareholdings in private companies, the value of his shares was $10,000, and his assets were less than $157,500.

The Department submitted both that Hunt failed to meet the assets test and that he could not qualify for the Grant, because he had an ongoing interest in the head lease from the Company, which expired in 2009. It was under-leased, until 2004, when, subject to a right of renewal for a further term of five years, his right to re-occupy the land would be restored to him. He retained an interest in the land used for farming, and so long as the Company lease and the under-lease, related to land used for farming, Hunt remained a 'farm owner or operator', although he may not undertake any farming himself.

'Farm owner or operator'

The Tribunal stated that, in accordance with s.3(2) of the Act, a farmer is a person who has a right or interest in the land used for the purposes of a farm enterprise. Hunt's interest in land, used for the purposes of a farm enterprise, was the land contained in the head lease from the Company. He had under-leased that land, until 2004, and received $51,000 per annum from the tenants. He had not sold this interest in the land, merely sub-let that interest for a period of time, and the land would revert to him and his wife, in partnership, at the expiration of the lease. Therefore he had not sold the farm enterprise in accordance with s.3.2(1)(b) of the Act and continued to be a 'farm owner', or 'operator', as he had retained his only interest in the land. Further, the requirement that he 'not be a farm owner or operator' in accordance with s.3.2(1)(d)(i) of the Act was not satisfied.

Asset value

Hunt argued that the value of the company should be discounted, taking into account partnership liability guarantees, restriction in tradability of shares, minority shareholding, and history of director's fees. Although the Tribunal acknowledged that there was some merit in the principle of some of the write-downs, the Tribunal considered the degree of the reductions suggested by Hunt excessive. It was also argued that the value should be reduced by an amount of $750,000. This figure related to bank loans made to the Partnership, constituted by the three brothers and their wives, and secured by way of mortgage over the Company's land. The Tribunal said that while the Company may at some time in the future be called on to accept some responsibility for repayment, no such demand has been made. In the event of a demand of this kind, the extent of the Company's obligations would be dependent on the financial circumstances of the individuals with the prime responsibility. To reduce the net assets of the Company by the full amount of the bank debt ignored these contingencies.

The Tribunal accepted that the shares in the Company should be valued in accordance with the net tangible asset backing method, taking into account redeemable preference shares and, on that basis, the 66 shares held by Hunt had a value of $369,660. This figure exceeded the allowable limit of $167,500 and Hunt could not satisfy s.3.2(1)(f) of the Act.

Formal decision

The Tribunal affirmed the decision under review.

[A.T.]

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